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Statutory Time Limits in other jurisdictions

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1 Introduction

This paper has been prepared in response to a request from the Committee for Justice for information about statutory case time limits and statutory custody time limits in other jurisdictions and whether they have contributed to a reduction in delays in criminal proceedings.

The statutory time limits that apply to custody and case proceedings in national and international jurisdictions vary considerably. This paper details the various limits and examines their application in practice. It also looks at Northern Ireland's current legislative provisions and processes to provide background and context to the issue.

Key Points

- Sanctions are key to the operation of time limits as without them limits may prove ineffective. Evidence from England and Wales in a youth court pilot indicated that the Sentencing Time Limit was ineffective due to lack of sanctions for breach.

- Sanctions and safeguards are important for the operation of time limits and need to balance the interests of the accused against the interests of the victim and wider society. In Scotland for example, legislation was amended in 2004 so that when the time limit is reached for a person in custody, they are now entitled to release on bail rather than immunity from prosecution. Following the introduction of 'new' time limits in Canada, of the 1766 applications to have charges stayed due to delay the following year, 204 were granted, including offences for murder and sexual assault on a minor.

- Extensions to statutory time limits are prevalent in Scotland and Australia although clear deadlines are in place. Therefore, it can be argued that they have had a limited influence on reducing the length of the criminal justice process as delays still exist in due trial preparation and court availability.

2 Summary

The statutory time limits that apply to custody and case proceedings in national and international jurisdictions vary considerably.

England and Wales

Although legislation gives the Secretary of State, the power to make regulations to set Overall Time Limits and Custody Time Limits, regulations have only been made in respect of Custody Time Limits. There are currently four types of Custody Time Limits depending on the type of the offence. Failure to comply with Custody Time Limits results in the accused's immediate right to bail.

Overall Limits, Initial Time Limits and Sentencing Time Limits were piloted in 1999 in youth court cases and taken together covered most of the criminal process i.e. from arrest to sentence, except for the trial period. The pilot indicates that time limits were effective in relation to the Initial Time Limit and Overall Time Limits. Despite this, the Government decided not to roll out the time limits nationally as the benefits identified in the evaluation of the pilot were outweighed by the arguments put forward by various agencies including the police and Crown Prosecution Service. The overall view from those agencies was that the process had the effect of increasing bureaucracy within the system.

Scotland

In Scotland, the Criminal Procedure (Scotland) Act 1995 provides for statutory time limits in pre-trial stages of solemn criminal proceedings. In non-custody cases a preliminary hearing must take place within 11 months and trials must take place within 12 months. There are also three statutory time limits in custody cases: the 80 day rule which requires the service of an indictment listing all the charges and witnesses upon the accused within 80 days of committal; the 110 day rule which requires a preliminary hearing to take place within that period; and the 140 day rule which requires a trial to take place within that period. If these restrictions are not met, the accused is granted bail. Despite the 140 day rule being increased from 110 days in 2004, an evaluation of the statutory time limits in 2007 reported large numbers of extensions to the 140 day rule were still necessary. Contemporary anecdotal evidence from legal practitioners indicates that extensions to the 140 are still prevalent.

Australia

In Victoria, Australia, sexual offence cases must commence within three months of committal or after the indictment against the person is filed, although three-month extensions may be granted. Research from Victoria shows that the time limits are rarely met and that extensions are common.

Canada

In 2016, the Canadian Supreme Court ruled that cases in the provincial court must be completed within 18 months, and within 30 months in the superior courts. This led to a wave of 1766 applications to have charges stayed between July 2016 and April–June 2017. Of this number, 204 stays of proceedings were granted, including offences for murder and sexual assault on a minor. As a result, a number of other Canadian jurisdictions announced system reforms and additional resources to combat the issue of trial delay.

New Zealand

In 2014, the New Zealand Law Commission recommended introducing a time limit from charge to setting the case down for hearing for sexual offence cases but to date this has not been introduced. Rather, the recently introduced Sexual Violence Legislation Bill aims to improve the experiences of complainants of sexual violence by focusing on reducing the re-traumatisation victims may experience when giving evidence in court.

Northern Ireland

There are currently no statutory time limits that apply to custody or case processing in Northern Ireland. In 2011 and 2012, a number of reviews called for the introduction of statutory time limits covering the period from arrest to case disposal, beginning with youth court cases. The Criminal Justice (Northern Ireland) Order 2003 contains provision for the creation of a time limit for a specified stage of the criminal process, starting at the point of charge or, for summons cases, the date the complaint is made by the Public Prosecution Service. However, criminal justice stakeholders responding to the Department of Justice's consultation, at the time, indicated a preference for an earlier start point in the criminal process.

In order to provide a more flexible type of time limit scheme, primary legislation would be required. The absence of a functioning Assembly in the period January 2017 to January 2020 appears to have delayed any further progress of this matter. In the interim period, the 2018 Gillen Review considered the matter of statutory time limits but did not ultimately recommend their introduction in Northern Ireland. Sir John Gillen noted that they have a limited influence on reducing delays or the length of the criminal justice process in other jurisdictions where extensions are common.

3 England and Wales

In England and Wales, Section 22 of the Prosecution of Offences Act 1985 gives the Secretary of State the power to introduce statutory time limits for the prosecution to complete the preliminary stages of criminal proceedings (Overall Time Limit) and the power to set custody time limits.[1] However, caution has been exercised in making use of these powers.

Although legislation providing for custody time limits was introduced in 1991, the Overall Time Limit (OTL) was not commenced at that time. Instead, it was piloted along with two additional time limits in relation to youth custody cases. The first time limit covered the period of arrest to first appearance at court – this was the Initial Time Limit (ITL). The second covered the period between conviction and sentence for the offence being completed, known as the Sentencing Time Limit (STL). A final evaluation report of the pilot was published in 2002.[2] The evaluation concluded that the ITL and OTL should be rolled out nationally, but not the STL as it was ineffective due to a lack of sanctions for non - compliance.

Although the evaluation was favourable, the Government considered that the benefits of the time limits were outweighed by the arguments put forward by various criminal justice agencies against their use. It stated that:

> *Taken together with the many other measures that are being taken to improve case management in the criminal justice system, we have decided not to extend statutory time limits across England and Wales*
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> *Although statutory time limits have been made to work in the pilot areas, concerns have been expressed by the criminal justice agencies at the burden which the limits impose on the system.*
>
> *The Association of Chief Police Officers and the Crown Prosecution Service consider that the limits have increased the administrative burden for the police and CPS in dealing with youth cases. They are also concerned that the limits might conflict with the priority being given to improving the quality and effectiveness of case preparation to reduce the number of ineffective trials.*
>
> *The overall view is that the process adds to bureaucracy—if extensions are needed, applications have to be made to the court and notice served on the defence; and the time limit has to be recalculated for periods unlawfully at large. While only a few cases were lost because extensions were not applied for or were refused, this would be much more of a problem nationally and the potential for loss of public confidence in the system would be that much*

[1] Prosecution of Offences Act 1985 Act, Section 22: https://www.legislation.gov.uk/ukpga/1985/23/section/22

[2] J Shapland et al "Evaluation of Statutory Time Limit Pilot Schemes in the Youth Court" Final Report Home Office Report, 21/03.Report was published in January 2002 and revised in 2003. The purpose of the evaluation was to look at the progress of youth cases and whether this was speeded up by time limits, the practical effects of their operation, practitioners' views and the impact of the Human Rights Act 1998.

greater. The impact on victims is of particular concern, especially if the case was perceived as being dropped because of a procedural technicality.

We also consider that it is not necessary to have rigid statutory time limits in each and every case in order to deliver our aim of speedy and efficient preparation for trials or sentencing. In our view, custody time limits and the power of the courts to stay cases where delay amounts to an abuse of process are adequate legal safeguards against undue delay in bringing cases to trial.[3]

Custody Time Limits

Custody Time Limits (CTL) prescribe the maximum amount of time a defendant may be held in custody during the pre-trial stage of criminal proceedings. If the trial cannot be started before the CTL expires, the court must release the person on bail unless the prosecution successfully applies to extend it. CTLs run from the first court appearance and apply to each and every charge rather than the offender.[4] The Prosecution of Offences Act 1985 and the Prosecution of Offences (CTL) Regulations 1987 governing CTLs requires the prosecution to progress cases to trial diligently and expeditiously. The legal burden of monitoring and complying with CTLs also rests on the prosecution. Failure to comply with custody time limits results in the accused's immediate right to bail.

To assist prosecution staff to correctly calculate these limits a calculator has been developed to determine the expiry date. These calculations can be complex depending on the circumstances, for example, in a case involving several accused with different time limits running at the same time. There are four different time limits depending on the type of offence and the court dealing with the case:

- For **Summary Only Offences**, the time limit is 56 days. This is an extremely short timeframe in which the police must prepare and dispatch a case to the Crown Prosecution Service (CPS) and for the CPS to review and serve it on the defence. These cases must be progressed with particular urgency.

- For **Either Way Offences**, the CTL is observed as 56 days. The Regulations provide that the time limit is 70 days, but 56 days if allocation is dealt with before the 56th day. The CPS treats all either way offences as having an initial 56 day time limit in the Magistrates' Court 'as this has been shown to avoid failures'.[5] As the courts are likely to deal with allocation at the first hearing,

[3] HL Deb, 31 March 2003, c90W

[4] R v Wirral District Magistrates Court, ex parte Meikle [1990] Crim L R 801

[5] Crown Prosecution Service Legal Guidance https://www.cps.gov.uk/legal-guidance/custody-time-limits-including-coronavirus-protocol

currently the only occasion when a 70 day CTL might arise would be for consent to prosecution being sought from the Attorney General.

- The CTL for **Either Way Offences dealt with in the Crown Court** is 182 days and comes into force when:
  - The Magistrates' Court allocates a case for Crown Court trial (less any time spent in custody of the magistrates' court prior to sending); or
  - The defendant elects a Crown Court trial and the offence is sent (less any time spent in custody of the magistrates' court for that offence).
- For **Indictable Only Offences**, the time limit is 182 days from the date a case is sent to the Crown Court, less any time spent in custody (if remanded by the Magistrates' Court) prior to sending.

These time limits can only be extended by the court in exceptional circumstances which are due to:

- The illness or absence of the accused, a necessary witness, a judge or magistrate;
- A postponement is caused by the court ordering separate trials in the case of two or more defendants, or two or more charges; or
- Some other good and sufficient cause.

Impact of the Coronavirus Pandemic

Jury trials were suspended between 23 March and 18 May 2020 as a result of the Coronavirus pandemic, causing a backlog of court cases waiting to be heard. As a result, the Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020 were introduced in September 2020 in an attempt to address the backlog.[6] They apply to CTLs starting on or after 28 September 2020 but before 28 June 2021, by increasing the maximum amount of time a defendant can be remanded in custody. Under the regulations, the 182 day CTL has been increased to 238 days, and the 112 day CTL has been increased to 168 days. From 28 June 2021, the CTLs will revert to 182 (or 112 days) for new CTLs that start on or after that date. The other 56 and 70 day CTLs are not affected by these regulations.

The House of Lords Secondary Legislation Scrutiny Committee reported on the regulations in September 2020. Although the Committee expressed its understanding

[6] The Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020 https://www.legislation.gov.uk/uksi/2020/953/made

for the backlog caused by the pandemic, it did not believe that the new regulations would solve the problem. It noted that extending remand may have:

> *[…] extremely detrimental effects on the mental health of the individual and on the welfare of their families, especially where the prisoner is a parent or has dependants, every effort should be made to reduce it as soon as possible.*[7]

The House of Commons Justice Committee also raised concerns about the new regulations in a letter dated 16 September 2020 to the Lord Chancellor. The Justice Committee asked for further information on alternative measures that were considered during the development of the regulations. It also raised concerns about the limited opportunity given for parliamentary scrutiny of the new regulations.[8]

In January 2021, following months of campaigning by stakeholders and the threat of legal action, the Ministry of Justice announced that it was introducing further regulations exempting children from the extended custody time limits. The new rules apply retrospectively to children who had their custody time limits set under the September 2020 regulations. Their trials are required to be relisted to take place within the shorter custody time limits.[9]

[7] HOL Secondary Legislation Scrutiny Committee, 27th Report of Session 2019–21: https://committees.parliament.uk/publications/2705/documents/26890/default/ pg 4

[8] Letter from the Justice Committee to the Lord Chancellor 16 September 2020, https://committees.parliament.uk/publications/2606/documents/26044/default/

[9] The Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2021 https://www.legislation.gov.uk/uksi/2021/91/contents/made

4 Scotland

Scotland has arguably one of the tightest time limit regimes amongst comparable jurisdictions. Statutory time limits have been embedded in the Scottish criminal justice system for in excess of three centuries. The best known time limit was the 110 day rule, since increased to 140 days, which was described by Lord Bonomy at the time as the ‘envy of many but which no other jurisdiction really wants to have to work to’.[10]

Statutory Time limits are incorporated into the Criminal Procedure (Scotland) Act 1995 (as amended) for solemn proceedings[11] which regulate the maximum time that can elapse between a person appearing on petition and the first diet[12] and the commencement of a trial. They apply to every charge for each accused. Time limits differ if the accused is remanded or on bail.

In non-custody cases, a preliminary hearing must take place within 11 months and trials must take place within 12 months.[13] The consequence of non-compliance is that the accused is discharged from indictment with respect to any offence and cannot at any time be tried on these charges.

There are three statutory time limits in respect of people in custody:

- the 80 day rule which requires the service of an indictment listing all the charges and witnesses upon an accused within 80 days of committal;
- the 110 day rule which requires a preliminary hearing to take place within that period; and
- the 140 day rule which requires a trial to take place within that period in High Court cases.[14]

All of these time limits can by extended by the court on the basis of ‘cause shown’. This means that the court has to be satisfied that there is a good reason for granting the extension. Liberation under the 80 day rule does not prevent the subsequent service of an indictment on, and trial of, the accused.

The 140 day time limit was introduced by the Criminal Procedure (Amendment) (Scotland) Act 2004 following a review by Lord Bonomy in 2002, as the original 110 day time limit was frequently extended.[15] The most frequent reason for extension

[10] Lord Bonomy, (2002),”Improving Practice: Review of the Practice and Procedure of the High Court of Justiciary, p 50

[11] There are two types of criminal procedure –‘solemn’ and ‘summary’. In summary procedure, a trial is held in the Sheriff or Justice of the Peace Court before a judge without a jury. In solemn procedure the trial, whether in the High Court or the Sheriff Court is held before a judge sitting with a jury.

[12] Court hearings are referred to as diets

[13] Criminal Procedure (Scotland) Act 1995, Section 65: https://www.legislation.gov.uk/ukpga/1995/46/section/65

[14] Ibid

[15] Lord Bonomy, (2002),”Improving Practice: Review of the Practice and Procedure of the High Court of Justiciary

was to allow more time for preparation. The explanation given was that the period between the service of the indictment and the start of the trial, which is usually the same as that between the 80th and 110th days, was often inadequate for defence preparation for trial.

An evaluation of the revised time limits in 2007 found that the increase of the 110 day time limit to 140 days in custody cases had made little difference as a large number of extensions were still necessary.[16] The current sanction for non - compliance with these time limits is that the accused in entitled to be admitted to bail. This position was introduced in 2004, as the previous sanction for non - compliance was that the accused would forever be free from question and process about that offence.

Extensions to the 140 day rule are still prevalent today. Senior members of the legal profession have blamed these delays on a lack of judges, court space and of resources for the preparation of trials. The vice-president of the Dundee Bar Association has stated that the 140-day rule for High Court trials is being 'routinely disregarded in an oppressive and unjust way'. The president of the Scottish Criminal Bar Association also has stated that 'every busy High Court practitioner has noticed that the period between preliminary hearing and trial is getting longer and longer.'[17]

The Judiciary has also noted that it is rarely possible to fix the trial within the 140 day period and 'will simply not be possible during and after the COVID-19 pandemic. It is suggested that the problem is solved by granting appropriate extensions before fixing the trial. This would require a Crown motion to extend but the absence or scarcity of trial diets would be capable of amounting to cause for such a course'.[18] The Coronavirus (Scotland) Act 2020 introduced a 6 month suspension for solemn time-limits.[19]

[16] J Chalmers et al (2007) "An Evaluation of the High Court Reforms arising from the Criminal Procedure (Amendment) (Scotland) Act 2004

[17] The Scotsman, 15th December 2015 https://www.scotsman.com/regions/140-day-trial-rule-routinely-flouted-courts-1489693

[18] Judicial Institute for Scotland *Preliminary Hearings Bench Book* (2020) Pg 15 https://www.judiciary.scot/docs/librariesprovider3/judiciarydocuments/judicial-institute-publications/preliminary-hearings-bench-book.pdf?sfvrsn=e0e66eef_4

[19] Coronavirus (Scotland) Act 2020, Schedule 4: https://www.legislation.gov.uk/asp/2020/7/schedule/4/part/4

5 Victoria - Australia

Victorian statutory time limits have their origins in a government-led reform strategy for sex offences, which ran from 2006 to 2008. The Sexual Assault Reform Strategy's overall aim was to improve the effectiveness of the criminal justice's system's response to sexual offending and to victims of sexual violence. The Victorian Government allocated $34.2 million in the 2006/07 state budget to a range of initiatives, and another $8 million in the 2008/09 budget to improve access to prosecution services in regional areas. The Criminal Procedure Act 2009 set time limits for parties and judicial officers to complete various stages of the criminal process.

There are two sets of time limits in respect of sexual offences and non-sexual offences:

The **first limit** applies to the period between commencement of proceedings and the committal hearing. A committal hearing must be held within 3 months for a sexual offence, and within 6 months for all other cases.[20] The Magistrates' Court may fix a longer period for holding a committal mention if it is in the interests of justice. The Court must consider the seriousness of the offence and the reason why a longer period is necessary when determining whether to extend the period.

The **second time** limit applies to the period between filing of the indictment or committal for trial, and the date of the trial itself. Trials must take place within 3 months for a sex offence[21], and within 12 months for all other offences.[22] A trial commences when the accused is arraigned before a jury panel and pleads not guilty.

The time limits for the commencement of the trial may be extended if the court considers that it is in the interests of justice to do so. An order extending time for the commencement of a trial for a sexual offence must not be greater than 3 months. However, the Act does not prohibit multiple orders that provide a total extension greater than 3 months.[23] The County Court will, on its own motion, list an application for an extension of time for each sexual offence currently awaiting trial once a month. A prosecution representative must attend these hearings, while a defendant need not. The Court will grant the extension if it is in the interests of justice to do so.[24] In

[20] Criminal Procedure Act 2009, Section 126: https://content.legislation.vic.gov.au/sites/default/files/2020-02/09-7aa073%20authorised.pdf

[21] Ibid, section 212

[22] Ibid, section 211

[23] Ibid, section 247

[24] County Court Criminal Division Practice Note, PNCR 1-2015, 14.2: https://www.countycourt.vic.gov.au/files/documents/2018-08/county-court-criminal-division-practice-note-pncr-1-2015-01072017.pdf

response to the Coronavirus pandemic the timeframe for commencing a trial for a sexual offence may be extended for up to 6 months, rather than 3 months.[25]

A 2011 evaluation of the Sexual Assault Reform Strategy found that the timelines were ‘virtually never complied with in relation to matters involving adult complainants’ and that for cases involving adults, a waiting time of 15 to 18 months before trial was more common.[26] It was noted that judges were giving priority to matters involving children and people with cognitive impairments and that these took place much more quickly. As a result, other cases, including those involving sexual violence, were bumped further down the list.[27]

[25] (COVID-19 Omnibus (Emergency Measures) (Criminal Proceedings and Other Matters) Regulations 2020 r 7).

[26] Figures provided by the Ministry of Justice (28 April 2015) to the New Zealand Law Commission. New Zealand Law Commission *The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes* (2015)https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-R136-The-Justice-Response-to-Victims-of-Sexual-Violence.pdf

[27] Department of Justice Sexual Assault Reform Strategy – Final Evaluation Report (Department of Justice, Melbourne, 2011) as cited by the New Zealand Law Commission above at pg 66.

6 Canada

The Canadian Charter of Rights and Freedoms is part of Canada's Constitution. Under section 11(b), anyone charged with a crime has the right to be tried within a reasonable time.[28] The Canadian courts traditionally used to apply the test developed by the Canadian Supreme Court in *R. v. Morin* in order to determine whether there has been an infringement of this right.[29] In applying the test, the courts assessed the following four factors:

- length of the delay
- waiver by the defence of part of the delay
- reasons for the delay
- prejudice to the accused's interests in liberty, security of the person, and a fair trial

However, a decision by the Canadian Supreme Court in *R. v. Jordan* marked a significant departure from the established precedent.[30] In this case, the majority of judges rejected the framework established in *Morin*, noting its complexity and the unforeseeability of its application. The majority decision said that a 'culture of complacency towards delay has emerged in the criminal justice system'.

To address these problems, the court introduced a new framework based on a 'presumptive ceiling'. It set two separate limits on the duration of court proceedings. Superior court cases have up to 30 months to be completed, from the time the charge is laid to the conclusion of a trial. Provincial court trials should be completed within 18 months of charges being laid, but that can be extended to 30 months if there is a preliminary inquiry. Courts may also consider the individual circumstances of a case to determine whether the accused youth has been subject to an unreasonable delay, even if it is below the 18-month limit.

Once the time period between the laying of the charges and the end of the trial exceeds this ceiling, it is 'presumed to be unreasonable' and the proceedings have to be stayed. The onus is then on the Crown to disprove this presumption, which can only be done by invoking exceptional circumstances.

The *Jordan* ruling did not establish specific time limits for defendants under 18 years old, who are dealt with in the youth courts system. The majority ruling said there was no evidence that the youth criminal justice system suffered from the same systemic delays that would justify taking the 'exceptional judicial step' of setting a lower ceiling for youth cases. However, in the dissenting opinion, three judges indicated that a time limit of 15 months would be more appropriate for youth court cases.

[28] Canadian Charter of Rights and Freedoms https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/resources-ressources.html#copy

[29] R v Morin [1992] 1 SCR 771 https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/857/index.do

[30] R v Jordan [2016] 1 SCR 631 https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16057/index.do

Judge delay and Transitional cases

The case of *R. v. K.G.K.* further refined the parameters of delay set out *in R v Jordan*. In 2013, K.G.K. was charged with sexual crimes against a child. Although the trial finished in January 2016, the trial judge took nine months to deliver a guilty judgement. The day before the judgement, K.G.K. asked for a stay of proceedings. He said that his case had taken longer than the usual 30-month maximum and that trial judge had taken too long to give his decision. The prosecution argued that the time taken was reasonable because K.G.K.'s case was 'transitional'[31]. It said the trial judge's decision-making time didn't count toward the Jordan time limit.

The Supreme Court unanimously agreed that the time a trial judge takes to decide a case doesn't count toward the Jordan time limit. The majority of judges said at the time Jordan was decided, there was a real problem with delays in getting people to trial but did not highlight a problem with the time trial judges took to give their decisions.

The majority of judges created a new approach to decide if a trial judge has taken too long to give their decision. It said that trial judges should be presumed to take only the time necessary to deliver a fair decision. As the people dealing with all the evidence and arguments, they said they were in the best position to figure out how long they would need to decide the case. However, if the accused can show that the trial judge took 'markedly longer' than was reasonably necessary to make their decision, the proceedings will be stayed."[32]

Impact of the *Jordan* Ruling

The *Jordan* decision took Canada's criminal justice system by surprise, prompting a rush by prosecutors to expedite cases and provoking a wave of applications for dismissal of charges due to excessive delays. 1,766 applications for charges to be stayed were filed between July 2016 and April–June 2017. Of this number, 204 stays of proceedings were granted, including offences for murder and sexual assault on a minor.[33]

To address the issue of delays, a number of Canadian jurisdictions announced system reforms and additional resources. For example:

- In December 2016, Ontario announced a plan to appoint 13 more judges and hire an additional 32 Assistant Crown Attorneys and 16 duty counsel, as well as additional court staff. A new bail directive to "make the bail system faster and fairer" was also announced on 30 October 2017.

[31] Jordan also set out special rules for cases that had already started when the rules changed. These were called "transitional" cases.

[32] R. v. K.G.K 2020 SCC 7, Supreme Court of Canada Case in Brief. https://www.scc-csc.ca/case-dossier/cb/2020/38532-eng.aspx

[33] Data obtained by The Canadian Press from various jurisdictions and published in July 2017. Cited by Canada's Library of Parliament Unreasonable Delays in Criminal Trials: the Impact of the Jordan Decision December 2017

- In Quebec, a $175.2-million investment over four years was also announced, earmarked for adding new judge positions and for hiring 69 Crown prosecutors.
- Alberta announced a $14.5-million investment to hire 35 new Crown Prosecutors and court support staff; and
- Ontario and Manitoba called for reform to limit the use of preliminary inquiries.

In some provinces, including Nova Scotia, the preferred process is to prioritise cases so they can be dealt with more efficiently by proactively negotiating plea bargains early in the process in exchange for reduced sentences.[34]

[34] Canada's Library of Parliament Unreasonable Delays in Criminal Trials: the Impact of the Jordan Decision December 2017 https://hillnotes.ca/2017/12/11/unreasonable-delays-in-criminal-trials-the-impact-of-the-jordan-decision/

7 New Zealand

No statutory time limits currently exist in New Zealand, despite having been recommended by the New Zealand Law Commission. In November 2014, the then Minister of Justice asked the Law Commission to develop proposals for improving the court experience of complainants in sexual violence cases. The Law Commission made a total of 82 recommendations including that all cases involving sexual violence should be set down for hearing within a specified time from filing of the charge, except in exceptional circumstances. It also recommended that the Victims' Rights Act 2002 should be amended to include a right for sexual violence complainants to have their cases disposed of in 'as speedy a manner as possible'.[35]

Explaining the recommendations in detail, the Law Commission stated:

> *We have considered whether a statutory requirement would be of benefit in New Zealand and would actually lead to a decrease in disposal times for sex offence cases. On the one hand, simply imposing a statutory requirement will not increase the courts' capacity to prioritise sexual violence cases, especially when that must be balanced against the need to give priority to other cases, such as ones involving children. Also, if such a limit were introduced, there would need to be sufficient "slack" to be able to divert judges to those cases when they came up, in order to ensure statutory time limits were met. Additional judicial resources may be required.*
>
> *On the other hand, a legislative time limit puts demonstrable importance on the desirability of prioritising disposal of sexual violence cases. In this manner it provides a clear signal to the courts and the public that, once proceedings are commenced, efforts will be made to bring those to trial as speedily as possible.*[36]

The recommendation did not extend to setting down a specific time period, as the Commission had not consulted with the justice sector on any particular time limit. However, it did suggest that:

> '*a time limit of 12 months from the time of filing of charges to the time the case is set down for hearing might be appropriate (and achievable, given the mean disposal time of a sexual violence case in the District Courts in 2014/ 2015 was between 14 and 15 months.) However, further analysis and consultation would be required before an exact time limit could be finalised in legislation*'.[37]

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[35] Law Commission The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes (2015)https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-R136-The-Justice-Response-to-Victims-of-Sexual-Violence.pdf Pg 11

[36] Ibid pg 66-67

[37] Ibid

The Government accepted the Law Commission's position that reform would improve the justice response for victims of sexual violence but said it would require further analysis to establish an achievable and effective programme for change. [38] This was conducted by the Ministry of Justice, following which the introduction of a time limit was not pursued. Although the Sexual Violence Legislation Bill[39] was recently introduced to respond to the Law Commission's recommendations, it aims to improve the experiences of complainants of sexual violence by focusing on reducing the re-traumatisation victims may experience when they give evidence in court. It tightens the rules around evidence of the complainant's sexual experience and disposition. It also includes entitlement to give evidence in alternative ways, including pre-recorded cross examination. It is currently making its passage through the New Zealand Parliament.

[38] Government Response to the Law Commission report on The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes:
https://www.lawcom.govt.nz/sites/default/files/governmentResponseAttachments/Government%20Response%20to%20Victims%20of%20Sexual%20Violence-%20Criminal%20Trials%20and%20Alternative%20Processes%20R136.pdf

[39] Sexual Violence Legislation Bill https://legislation.govt.nz/bill/government/2019/0185/latest/LMS268239.html

8 The Northern Ireland Background and Context

8.1 Northern Ireland Prosecution and Bail Process

Criminal proceedings in Northern Ireland are usually commenced by either the PSNI charging the accused or by the Public Prosecution Service NI (PPSNI) making a complaint to a lay magistrate under article 20 of the Magistrates' Courts (NI) Order 1981.[40]

Where proceedings have been commenced by a **charge**, the defendant is brought before the next available court (overnight charge case) or police may grant bail requiring the defendant to attend before a magistrates' court within 28 days from the date of charge. Before the defendant's first appearance in court, the PPSNI will review the charges and may approve, amend, or withdraw them. If the charges are withdrawn, then the defendant does not appear in court.

Where proceedings have been commenced by a **complaint**, a summons is served on the defendant requiring them to attend a particular magistrates' court on a specified date. After the decision to prosecute has been taken by the PPSNI, it prepares the summons and a lay magistrate must sign it. The complaint for summary offences must be made within six months from the time when the offence was committed, otherwise the Magistrates' Court has no jurisdiction to hear the matter.[41]

The PPSNI applies a two-stage test when making a decision to prosecute. First, the evidential test requires the availability of evidence to determine that there is a reasonable prospect of a conviction. Secondly, the public interest test requires the prosecution to be in the public interest.

The PPS received 43,332 files during 2019/20. This represented an increase of 0.1% on 2018/19 (43,298).[42] The median calendar days required for the issue of an indictable prosecution was 148 days, a decrease from 166 days in 2018/19. Summary prosecution decisions required a median of 4 days, which was the same as in the previous financial year.

Custody

The PPSNI will ask the court to remand the defendant in custody if it considers that there is a risk of the defendant -

- running away
- interfering with or threatening witnesses
- perverting the course of justice
- committing further offences

[40] Magistrates' Courts (NI) Order 1981 Article 20: https://www.legislation.gov.uk/nisi/1981/1675/article/20

[41] Ibid, Article 19: https://www.legislation.gov.uk/nisi/1981/1675/article/19

[42] Public Prosecution Service Statistical Bulletin 2019/20 https://www.ppsni.gov.uk/sites/ppsni/files/publications/Statistical%20Bulletin%202019-20%20Final.pdf

- being a threat to public order

The judge must grant bail unless the prosecution can demonstrate specific risk. The defendant will enter into a recognisance with the court to pay money if they break the conditions of bail.

If a person is charged and released by the police on bail, the first court appearance must be within 28 days from the date of the charge.[43] This usually takes place in the Magistrates' Court, where the District Judge will consider if there is enough evidence to connect the defendant to the crime. If a defendant is held in prison, they may apply for bail again, but usually only when there has been a change in circumstances since they last applied for bail. The defendant can also apply for compassionate bail for a short period, for example, for a family funeral.

Hearing Times

Cases are managed under the supervision of a judge in the Magistrates' Court until it is ready for committal. Usually, a case will be reviewed every four weeks, with the Magistrate asking for an update on progress. If there is evidence of undue delay, the Magistrate can, for example, put pressure on the PPS and PSNI, where necessary, to obtain whatever reports are necessary to move the case forward.

In 2019/20, the median time taken for a case to be dealt with in the Crown Court was 410 days. This represented a decrease of 1.4% from the median of 416 days in the previous year.

The median time taken for a case to be dealt with in the Magistrates' Court was 72 days. This represented an increase of 2.9% from the median of 70 days taken in 2018/19.

The median time taken to complete cases for motoring related offences was 119 days, compared to a median time of 698 days taken to complete sexual offences cases.[44]

[43] The Police and Criminal Evidence (Northern Ireland) Order 1989, Article 48: https://www.legislation.gov.uk/nisi/1989/1341/article/48

[44] Department of Justice *Case Processing Time for Criminal Cases Dealt with at Courts in Northern Ireland, 2019/20* https://www.justice-ni.gov.uk/sites/default/files/publications/justice/court-processing-times-sept.pdf

8.2 Previous Call for Statutory Time Limits

The Criminal Justice (Northern Ireland) Order 2003 contains provision for regulations to introduce a statutory time limit for a specified stage of the trial process, starting at the point of charge or, for summons cases, the date the complaint is made by the PPS.[45] Article 15 of the 2003 Order also allows regulations to be made in respect of two additional time limits for those under the age of 18: an initial time limit which covers the period beginning with the arrest of the young person until the first appearance in court; second time limit, the sentencing time limit covers the period between conviction and sentencing. This article provides that where an initial time limit expires before the person is charged with the offence, he shall not be charged unless new evidence is obtained relating to it.[46]

Between 2011 and 2012, three independent reviews highlighted delay in processing cases as a significant challenge for the criminal justice system.[47] They all individually recommended that Statutory Time Limits should be introduced as a means of accelerating processing times. In particular, they all agreed that introduction should be prioritised for the Youth Court, where cases took longer to complete on average than in the adult Magistrates' Courts.

To consider the matter further, the Department of Justice issued a consultation in December 2013 on *Time limits in the Youth Courts*. Discussions with key stakeholders indicated that there was a preference for the time limit to commence when the alleged offence is reported or at a very early stage in the criminal justice process. As the Criminal Justice (Northern Ireland) Order 2003 only provides for the creation of a time limit for a specified stage, the Department acknowledged that primary legislation would need to be introduced to amend the Order to introduce time limits for an earlier stage.

In 2015, the Department launched another consultation on the issue, taking into account the views already expressed by stakeholders. In doing so, the then Minister for Justice, David Ford MLA, said:

> *When appointed Minister for Justice, I said that one of my priorities for devolution would be to create a faster, fairer justice system. A key part of achieving this will be the introduction of statutory time limits (STLs). I remain committed to this vision and to that end I would like to see more flexibility on the type of STL scheme which can be delivered.*
>
> *I am conscious that it will not now be possible to deliver a new STL scheme in this Assembly mandate as it would require primary legislation to amend the*

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[45] Criminal Justice (Northern Ireland) Order 2003, Article 12: https://www.legislation.gov.uk/nisi/2003/1247/article/12

[46] Criminal Justice (NI) Order 2003, Article 15: https://www.legislation.gov.uk/nisi/2003/1247/article/15

[47] The three reviews were: "Review of the Youth Justice System" led by John Graham, published 26 September 2011; "Review of Northern Ireland Prison Service", led by Dame Anne Owers, published October 2011; and "Avoidable Delay, a progress report" by Criminal Justice Inspection, published January 2012.

> *Criminal Justice (Northern Ireland) Order 2003 to facilitate a more flexible scheme. Therefore, this consultation seeks your views on how the 2003 Order might be amended, and the type of STL scheme, which would then be possible.* [48]

It appears as though the Department intended to introduce Statutory Time Limits during the next Assembly mandate, but this was curtailed by the absence of a functioning Assembly between January 2017 and January 2020.

The Gillen Review - Report into the law and procedures in serious sexual offences in Northern Ireland

In 2018, the Criminal Justice Board commissioned a review of the law and procedure in prosecutions of serious sexual offences. The Review was led by a former Lord Justice of Appeal, the Right Honourable Sir John Gillen. In his report, published in May 2019, he made sixteen key recommendations, supplemented by more than two hundred and fifty supporting recommendations.[49]

Addressing unreasonable delay in the criminal justice system was a keystone of the Review. Sir John noted that '*The delay is found in the PSNI investigation, the Public Prosecution Service (PPS) allocation of cases for consideration and in the court process itself. There are far too many adjournments and a failure to mandate early engagement of both defence and prosecution counsel to address the issues in a timely fashion'*.[50]

He highlighted numerous Criminal Justice Inspectorate Northern Ireland reports from the past decade, which had raised concerns about avoidable delay, including the quality and timeliness of police files:

> *Troublingly however, the recent inspection of November 2018 found that the submission of files to the PPS was in accordance with PSNI time limits in only 41% of cases and the PSNI acknowledged that delay was a significant issue for the Public Protection Branch. In file samples from the PPS, just over a third of cases required a Decision Information Request to PSNI prior to the decision being taken by the prosecutor.*[51]

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[48] Department of Justice, Statutory Time Consultation (2015)https://www.justice-ni.gov.uk/sites/default/files/consultations/doj/stl-consultation.DOCX

[49] Gillen Review (2019) *Report into the law and procedures in serious sexual offences in Northern Ireland* : https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf

[50] Ibid, pg 17

[51] Ibid, pg 282-283

Sir John Gillen also considered the matter of statutory time limits in detail but did not ultimately recommend their introduction, stating that:

> *[…] research suggests that these statutory time limits have had a limited influence on reducing delays or the length of the criminal justice process. Extensions are common, and the key reason often relates to the defence requiring additional preparation time*.[52]

He went on to explain:

> *I add three riders to my comments on case management. First, whilst a number of our international colleagues have statutory case management, I do not favour statutory case management simply because it lacks the flexibility of bespoke directions. Our judges have a great deal of experience now of case management and the straitjacket of statutory obligation is not to be welcomed.*
>
> *In a small jurisdiction, where judges regularly attend Crown Court meetings, there really is little room for inconsistency and in any event can be easily detected. The implementation of these recommendations will highlight the vital necessity of case management together with the precise steps that should be taken. I can see no reason why there is a need for statutory case management made in a vacuum and in the absence of the particular facts of each case.*
>
> *Secondly, I see no benefit in statutory time limits for precisely the same reasons. The experience in Scotland and Victoria illustrates that they have little or no impact other than to show their impotence. They fail to recognise that serious sexual offences are in many respects unique and need bespoke directions in most cases.*
>
> *Thirdly, what sanctions are available for noncompliance? The Judiciary is reluctant to impose legal aid sanctions and there is no current provision for a wasted costs order in the criminal justice system. In criminal trials the concept of 'strike out' against a defendant for non-compliance is a non-starter. Public condemnation by the Judiciary for non-compliance or, in the last analysis, referral to the professional bodies of the lawyers in face of defiant noncompliance perhaps are the only effective components of a compliance system.* [53]

[52] Ibid, pg 296

[53] Ibid, pg 310